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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/800,225	03/12/2004	Valerie Kazich	VAK-P-03-001	8558

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PATENTS+TMS, P.C.
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CHICAGO, IL 60647

EXAMINER

WEINSTEIN, STEVEN L

ART UNIT	PAPER NUMBER
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1761

DATE MAILED: 12/05/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/800,225

Applicant(s)

KAZICH, VALERIE

Examiner

Steven L. Weinstein

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☐ Claim(s) ____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. ____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|--|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. ____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>6/21/04</u> . | 6) <input type="checkbox"/> Other: ____ |

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The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1, 2, and 8 are rejected under 35 U.S.C. 102(b) as being anticipated by Ackaluskay (2,803,550).

In regard to claim 1, Ackaluskay discloses an apparatus for collecting drips from a frozen treat, the apparatus comprising a base defined by a perimeter wherein the base has a top layer (24) covering a bottom layer (18) wherein the base is planar and further wherein the top layer is an absorbent material, said apparatus further comprising a lip (14) on the perimeter of the base wherein the lip extends outward with respect to the top layer of the base, and an opening in the base extending from the top layer to the bottom layer wherein the opening is located inside the perimeter of the base. This is all that claim 1 positively recites. It is noted that claim 1 does not recite that the top layer covers all of the bottom layer. In regard to claim 2, Ackaluskay discloses that the bottom layer is plastic. Claim 8 is rejected for the reasons given above.

Claims 1,3,8,13,16,17, and 18 are rejected under 35 U.S.C. 102(b) as being anticipated by Taylor (2,735,778).

In regard to claim 1, Taylor discloses an apparatus for collecting drips from a frozen treat, the apparatus comprising a base defined by a perimeter wherein the base has a top layer (e.g. 8) covering a bottom layer (e.g. 9), wherein the base is planar and further wherein the top layer is an absorbent material, said apparatus further comprising

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a lip (e.g. see e.g. 7) on the perimeter of the base wherein the lip extends outward with respect to the top layer of the base, and an opening in the base extending from the top layer to the bottom layer wherein the opening is located inside the perimeter of the base. In regard to claim 3, Taylor discloses the absorbent material is paper and claim 8 is rejected for the reasons given above in regard to claim 8. In regard to claim 13, Taylor discloses connecting the cover to the base. In regard to claim 17, Taylor discloses laminating the cover.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claim 2 is rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor in view of Ackalusky, further in view of Perkins (2003/0087011), Pagnini (3,306,512), Blant (GB2293751), Rizzuto (4,938,411), Oshio (2002/0029697), Suzuya Shokuhin (JP 11-137179), and Smith (5,770,250).

Claim 2 differs from Taylor in the recitation that the bottom layer is plastic whereas Taylor discloses a nonabsorbent paper material. Ackalusky can be relied on to teach it was well established to employ plastic, paper or cardboard as a bottom layer in an anti-drip device. To modify Taylor and substitute one conventional material of construction for another conventional material of construction for its art recognized and applicants intended function would therefore have been obvious. Perkins, Pagnini,

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Blant, Rizzuto, Oshio, Suzuya Shokuhin and Smith are relied on as further evidence of the conventionality of anti-drip devices.

Claims 4-7, 9-12, 14, 15, 19 and 20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Taylor in view of Ackalusk, Perkins (2003/0087011), Pagnini (3,306,512), Blant (GB2293751), Rizzuto (4,938,411), Oshio (2002/0029697), Suzuya Shokuhin (JP 11-137179), and Smith (5,770,250), further in view of Huffer et al (6,457,585), Penick et al (4,336,664), Freedman et al (2,585,924), Lipper (6,814,234), Moravick et al (3,704,892), Shin (4,648,548), Knoerzer et al (6,746,743), Gottschalk (3,835,564), Goldstein (3,100,642), Witkowski et al (5,676,401), McClung et al (6,755,711), and Bellet (2,711,541).

Taylor discloses the two layers as recited above in regard to claim 1. Ackalusk, Perkins (2003/0087011), Pagnini (3,306,512), Blant (GB2293751), Rizzuto (4,938,411), Oshio (2002/0029697), Suzuya Shokuhin (JP 11-137179), and Smith (5,770,250) are relied on as further evidence of the conventionality of anti-drip devices. Claims 4-7 differ from the combination in the recitation that an adhesive sticker, a washable tattoo, a partition in the base or a mark is associated with the base, respectively. As evidenced by Huffer et al, Penick et al, Freedman et al, Lipper, Moravick et al, Shin, Knoerzer et al, Gottshalk, Goldstein Witkowski et al, McClung et al and Bellet, it was notoriously conventional to provide an article that is to be associated with a product (such as a package associated with contents) with adhesive stickers, or washable tattoos, or partitions in the article such as the package (to allow for separation of an article of interest), or a mark. To modify the combination and provide these conventional

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elements for their art recognized and applicants intended function would therefore have been obvious. Claims 9-12, 14 and 15 are rejected for the reasons given above. In regard to claims 9,10,11, and 12, the particular layer that the elements recited (such as the sticker or partition) are attached to, or associated with, is seen to have been an obvious matter of choice. Claims 19 and 20 recite that the cover is removed from the base and the base is used as a disk. The art taken as a whole discloses that the cover can be laminated or the cover element can be positioned on the base (such as in the teaching in Ackalusk). Whether one removes the cover and what one does with the base after removal of the cover is seen to have been an obvious matter of choice or design; especially since the art taken as a whole teaches converting articles of one utility such as packages into articles of other utility such as entertainment or amusement devices. Note, too, it was well established to associate drip catching absorbent layers with tray type structures either by bonding or just a loose attachment as is done, for example, with meat trays.

The remainder of the references cited on the PTO892 forms are cited as pertinent art.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven L. Weinstein whose telephone number is 571-272-1410. The examiner can normally be reached on Monday-Friday 7:00 A.M.-2:30 P.M..

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on 571-272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Steve Weinstein
STEVE WEINSTEIN
PRIMARY EXAMINER 1761
12/4/06